

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building
1815 H Street, N. W.
Washington, D. C. 20006

July 14, 1980
JDH-80/195

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RECORDATION NO. 9841-5 Filed 1425

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JUL 14 1980 - 10 25 AM No. 0-198A020

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Date JUL 14 1980

Fee \$ 10.00

ICC Washington, D. C.

Dear Madam:

Enclosed please find eight fully executed copies of the following document between the parties listed below relating to certain railroad rolling stock as described herein, which document should receive Recordation No. 9841 showing it to be included with the filings previously made in this matter on February 14, 1979:

I. Document: Amendment No. 1, dated as of February 29, 1980 to Management Agreement dated as of October 31, 1978.

A. Parties:

Owner: Hillman Manufacturing Company ("Hillman")

Manager: Detroit and Mackinac Railway Company ("D&M")

B. Addresses:

Hillman: P.O. Box 510, Brownsville, Pa. 15417
Attn: Secretary

D&M: 120 Oak Street, Tawes City, Missouri 48763
Attn: Charles A. Pinkerton III

C. Equipment: 250-70 ton 50'6" General Purpose Boxcars, bearing numbers DM 10000-10249.

I respectfully request that the original of this document be recorded under the provisions of 49 U.S.C. §11303. I would also appreciate your stamping the additional copies of the above document which are not required for your filing purposes and returning them to me. A check in the amount of \$10.00 is enclosed to cover the filing fee.

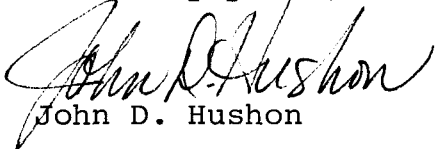
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FEE OPERATION B&B

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C. N. N. N.

Secretary
Interstate Commerce Commission
July 14, 1980
Page Two

The undersigned certifies that he is acting as counsel to Hillman Manufacturing Company and that he has knowledge of the matters set forth in the above-described document.

Sincerely yours,


John D. Hushon

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

7/14/80

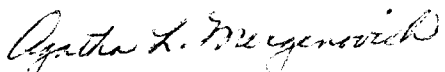
OFFICE OF THE SECRETARY

John D. Hushon
Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building
1815 H.St.N.W.
Washington, D.C. 20006

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **7/14/80** at **10:25am**, and assigned re-recording number(s). **9841-E**

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 9847 F Filed 1425

JUL 14 1980 - 10 25 AM

AMENDMENT NO. 1

INTERSTATE COMMERCE COMMISSION

DATED AS OF FEBRUARY 29, 1980

TO

MANAGEMENT AGREEMENT
DATED AS OF OCTOBER 31, 1978

BETWEEN

HILLMAN MANUFACTURING COMPANY
OWNER

AND

DETROIT AND MACKINAC RAILWAY COMPANY
MANAGER

AND

CONSENT

Filed and recorded with the Interstate Commerce Commission pursuant
to 49 U.S.C. 11303 on _____, 1980, at _____,
Recordation No. _____.

AMENDMENT NO. 1

AMENDMENT NO. 1 dated as of February 29, 1980, between HILLMAN MANUFACTURING COMPANY, a Pennsylvania corporation (hereinafter called the "Owner") and DETROIT AND MACKINAC RAILWAY COMPANY, a Michigan railroad corporation (hereinafter called the "Manager") to the Management Agreement dated as of October 31, 1978 between the Owner and Manager.

W I T N E S S E T H:

WHEREAS, The Provident Bank, as Agent (hereinafter called the "Agent") for Great American Insurance Company (hereinafter called "GAIC") and Stonewall Insurance Company (hereinafter called "Stonewall") (GAIC and Stonewall being hereinafter collectively called the "Investors"), the Manager, the Investors, the Owner, and Wilmington Securities, Inc. (hereinafter called the "Guarantor") are parties to a certain Finance Agreement dated as of October 31, 1978 which Finance Agreement was amended pursuant to a certain Amendment Agreement dated as of January 17, 1979 (hereinafter called the "Amendment Agreement") among Whittaker Corporation (Berwick Forge & Fabricating Division), the Owner, the Guarantor, the Manager, the Agent, and the Investors filed and recorded with the Interstate Commerce Commission (hereinafter called the "ICC") pursuant to 49 U.S.C. 11303 on February 14, 1979, and assigned Recordation No. 9841-D (such Finance Agreement, as so amended by the Amendment Agreement being hereinafter called the "Finance Agreement");

WHEREAS, GAIC holds Certificates of Interest (as defined in the Finance Agreement) evidencing One Hundred Percent (100%) interest in the Conditional Sale Indebtedness (as defined in the Finance Agreement) and Stonewall does not hold any Certificates of Interest nor does Stonewall have any interest in the Conditional Sale Indebtedness;

WHEREAS, the Owner and the Manager are parties to a certain Management Agreement dated as of October 31, 1978 filed and recorded with the ICC pursuant to 49 U.S.C. 11303 on November 16, 1978 and assigned Recordation No. 9841-B which Management Agreement was amended pursuant to the Amendment Agreement (such Management Agreement, as so amended by the Amendment Agreement being hereinafter called the "Management Agreement");

WHEREAS, the Owner and the Agent are parties to a certain Management Agreement Assignment dated as of October 31, 1978 (hereinafter called the "Management Agreement Assignment") filed

and recorded with the ICC pursuant to 49 U.S.C. 11303 on November 16, 1978 and assigned Recordation No. 9841-C; and

WHEREAS, the parties hereto have agreed, subject to the terms and conditions hereof, to amend the Management Agreement as hereinafter provided, the consent of the Agent being required pursuant to Section 16 of the Management Agreement before this Amendment No. 1 becomes effective.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties do hereby amend the Management Agreement as follows:

(1) Section 6 - Definition of "Utilization of the Units." The first sentence of clause (a) of the third paragraph of Section 6 of the Management Agreement is hereby amended by the addition of the words "paid or" immediately before the word "payable" the first time such word appears in such sentence, and by the substitution of the words "paid or payable to" for the words "received by" immediately before the word "Owner" the second time such word appears in such sentence, so that such sentence shall hereafter read as follows:

(a) "Utilization of the Units" shall be a fraction, the denominator of which (sometimes herein called "100% Utilization Revenue") is the amount that would be paid or payable to Owner in accordance with the provisions of Section 5 hereof with respect to the period for which Utilization of the Units is being determined, assuming that all of the Units traveled fifty-six (56) miles each day during such period and earned per diem and incentive per diem payments, if applicable, under the then prevailing AAR Car Hire Rate Table, and none of such travel was on Manager's tracks; and the numerator of which is the actual aggregate of all payments (including, without limitation, mileage charges, straight car payments, and incentive car payments) actually paid or payable to Owner from Manager for use of such Units during such period.

(2) Section 6 - Quarterly Payment of Incentive Fee. The last paragraph of Section 6 of the Management Agreement is hereby amended by the substitution of the words "in four equal quarterly installments on the last day of March, June, September and December of the year following the year in which such Incentive Fee was earned" for the words "within thirty (30) days of the final determination of such amount" immediately after the word "Owner" the first time such word appears in such paragraph, so that such paragraph shall hereafter read as follows:

Any Incentive Fee payable pursuant to the preceding paragraphs of this Section 6 shall be determined as soon as practicable after each December 31 during the term of this Management Agreement, but no later than February 1 of each year, and shall be paid by Owner in four equal quarterly installments on the last day of March, June, September and December of the year following the year in which such Incentive Fee was earned.

(3) Recording. This Amendment No. 1 shall be filed and recorded in accordance with the provisions of Section 22 of the Management Agreement.

(4) Ratification. Except as expressly amended hereby, the Management Agreement is hereby affirmed and ratified by the respective parties hereto and shall remain in full force and effect in all other respects and reference to such instrument shall hereafter mean such instrument as amended hereby.

(5) Execution. This Amendment No. 1 may be executed in any number of counterparts, but the counterpart delivered to the ICC for recordation and subsequently delivered to the Agent shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof. Although for convenience this Amendment No. 1 is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

(6) Consent and Approval. Upon execution by the parties hereto, this Amendment No. 1 shall be presented (i) to the Agent for the purpose of obtaining the consent of the Agent hereto in accordance with the provisions of Section 16 of the Management Agreement, and (ii) to GAIC for the purpose of obtaining the approval of GAIC to the consent of the Agent in accordance with the provisions of Paragraph 6 of the Finance Agreement. The consent of the Agent and approval of GAIC shall be evidenced by execution of the Consent and the Approval, respectively, at the foot of this Amendment No. 1. Until such time as the Agent and GAIC shall have so consented and approved this Amendment No. 1, it shall be of no effect.

(7) Governing Law. The terms of this Amendment No. 1 and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

WITNESS:

HILLMAN MANUFACTURING COMPANY

J. K. Burnett
Asst. Secretary

BY: Stan D. Hult
Vice President
DETROIT & MACKINAC RAILWAY COMPANY

Jackie L. Dwyer

BY: Charles A. Pinkerton
President

COMMONWEALTH OF PENNSYLVANIA)

: SS.

COUNTY OF ALLEGHENY)

On this 25th day of March, 1980, before me, Thelma V. Cypher, the undersigned officer, personally appeared Stephen M. Dubchison, who acknowledged himself to be the authorized officer of Hillman Manufacturing Company, a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as such officer.

Thelma V. Cypher
NOTARY PUBLIC

THELMA V. CYPHER, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES NOV. 8, 1982
Member, Pennsylvania Association of Notaries

STATE OF MICHIGAN)

: SS.

COUNTY OF Iosco)

On this 2nd day of April, 1980, before me Charles A. Pinkerton, III, to me personally known, who, being by me duly sworn, did say that he is the President of Detroit & Mackinac Railway Company, and that the seal affixed to the foregoing instrument was signed and sealed in behalf of the corporation by authority of its Board of Directors, and said Charles A. Pinkerton, III acknowledged the instrument to be the free act and deed of the corporation.

Shirley R. Luedtke
NOTARY PUBLIC


SHIRLEY R. LUEDTKE
Notary Public, Iosco County, Michigan
My Commission Expires April 28, 1981

APPROVAL

GREAT AMERICAN INSURANCE COMPANY hereby approves of the Amendment No. 1 dated as of February 29, 1980 between Hillman Manufacturing Company ("Owner") and the Detroit and Mackinac Railway Company ("Manager") to the Management Agreement dated as of October 31, 1978 between the Owner and the Manager to which this Approval is appended.

GREAT AMERICAN INSURANCE COMPANY

BY:



STATE OF OHIO)
 : SS.
COUNTY OF HAMILTON)

BE IT REMEMBERED, that on the 8th day of July, 1980, before me the subscriber, a Notary Public in and for said County and State, personally appeared J. Lynn Newbaker, of Great American Insurance Company, the corporation whose name is subscribed to and which executed the foregoing Approval and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instruments.



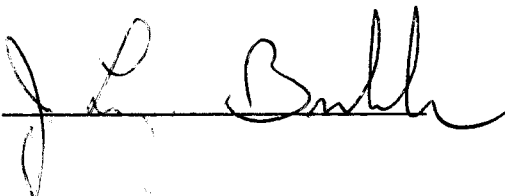
NOTARY PUBLIC

PHYLLIS K. LANGEVIN
Notary Public, State of Ohio
My Commission Expires Jan. 2, 1982

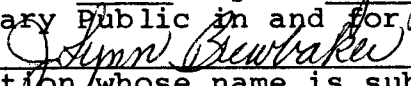
CONSENT

THE PROVIDENT BANK, as Agent pursuant to a certain Finance Agreement dated as of October 31, 1978, hereby consents to the Amendment No. 1 dated as of February 29, 1980 between Hillman Manufacturing Company ("Owner") and the Detroit and Mackinac Railway Company ("Manager") to Management Agreement dated as of October 31, 1978 between the Owner and the Manager to which this Consent is appended.

THE PROVIDENT BANK

BY: 

STATE OF OHIO)
 : SS.
COUNTY OF HAMILTON)

BE IT REMEMBERED, that on the 8th day of July, 1980, before me the subscriber, a Notary Public in and for said County and State, personally appeared , of The Provident Bank, the corporation whose name is subscribed to and which executed the foregoing Consent and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.


NOTARY PUBLIC

PHYLLIS K. LANGEVIN
Notary Public, State of Ohio
My Commission Expires Jan. 2, 1982